IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:	Thomas Senn Thorsten Braun Simon Greter Frances Lamy	))) Group Art Unit: 2672)))
on:	PROCESS FOR PRODUCING AN ELECTRONIC COLOR INFORMATION DATA FILE AND PROCESS FOR COLOR COMMUNICATION	) Examiner: C. Harrison)))))
Serial No.:	09/835,465	) Confirmation No.: 5999
Filed On:	April 17, 2001	)) (Docket No. 97634.00108)

REPLY BRIEF

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1. EXTENSION OF TIME

Appellant timely filed a Request for Extension of Time pursuant to 37 CFR §1.136(b) under Certificate of Mailing dated December 6, 2005. In Appellant's Request, a one month extension of time was requested, "at least in part, to permit Appellant to fully consider and address the newly cited publication entitled 'Plain Text Definition," which was not previously cited nor relied upon during *ex parte* prosecution of the subject application." Appellant has received no communication from the Patent Office in connection with this Request, but submits herewith its Reply Brief within the requested extension period. Substantive consideration of this Reply Brief is respectfully requested.

2. PRELIMINARY STATEMENT

The present application was filed on April 17, 2001. Substantive examination commenced on March 25, 2003, with an initial Office Action issued by the Patent Office. In the initial Office Action, the Examiner relied upon U.S. Patent No. 5,528,261 to Holt et al. (the "Holt '261 patent") in rejecting Appellant's claims. Since that initial Office Action, the following substantive communications have occurred with respect to the subject application:

Action	**Date**	**Content**
Response to Office Action	7/24/03	Appellant argued that the Holt '261 patent failed to teach or suggest storing "at least one data set in a preselected data format in a color information file in a text format." Response at pages 12-13 (emphasis in original).
Office Action (final rejection)	1/12/04	Examiner acknowledges Appellant's argument that "Holt fails to disclose storing data in a preselected data format in a color information file in a text format," but argues that "object-oriented programming (OOP) which is a C++ based (i.e. text based) program, where the OOP allows for representation of the text based data and functions as defined in the C++ program by objects." Office Action at page 10.
AF - Amendment	4/12/04	Appellant sought to further distinguish claims from cited Holt '261 patent, arguing that the Holt '261 patent fails to teach or suggest coding a data set into text and storing the data set in a preselected data format in the color information file in a text format.
Advisory Action	5/3/04	Examiner declined to consider AF – Amendment because the proposed amendments "raise new issues."
Request for Continued Examination	5/11/04	Appellant sought substantive consideration of AF – Amendment
Office Action	6/14/04	Examiner reiterates reliance on the Holt '261 patent, stating that "Holt et al. disclose coding the data into text by implementing an object-oriented programming design which uses any of one of multiple text based programming languages to code/represent the color data to be processed." Office Action at page 10.
Telephonic Interview	8/27/04	Examiner's Interview Summary Record reflects detailed discussions concerning converting, coding and storage of color sample data in text format. Appellant's representative argued that Holt does not disclose "converting and storing the color sample data in a text format or coding additional data inclusive of data for identifying, characterizing and supplementing the color sample data."

Action	**Date**	**Content**
Amendment and Response	9/14/04	Appellant sought to further distinguish claims from Holt '261 patent, arguing that Holt fails to teach or suggest, *inter alia,* "a method in which *at least one data set describing the color impression* of at least one color sample is *coded or converted into a pure text format* and that is *stored in a color information file in a pure text format* so that *all the information data associated with the at least one color sample, including identifying data, characterizing data, and/or supplementing or complementing data,* are stored as information data in a pure text format." Amendment at page 11 (emphasis in original).
Office Action (final rejection)	1/12/05	Examiner reiterates reliance on Holt '261 patent, stating that "Holt et al. disclose coding the data into text by implementing an object-oriented programming design which uses any of one of multiple text based programming languages to code/represent the color data to be processed (cite omitted)." Office Action at page 11.

Now, after more than two (2) years of substantive examination aimed precisely at the adequacy of the Holt '261 patent to teach or suggest coding, storing and/or retrieving a data set that identifies and characterizes a color sample in a text format, the Examiner introduces a newly cited publication – Bellevue Linux's "Plain Text Definition" – and states that the newly cited publication provides a suggestion to modify the methods of the Holt '261 patent to arrive at Appellant's claimed invention.

Appellant respectfully submits that the Examiner's reliance on the newly cited Bellevue Linux publication – without an offer to reopen *ex parte* examination – is procedurally improper. As is apparent from the tabular summary set forth above, Appellant has argued from the outset that the Holt '261 patent is inadequate to support the Examiner's rejections. Now, at the eleventh hour and after substantial investment on the part of Appellant, the Examiner apparently concedes the point, but expects the appeal to move forward as if the Bellevue Linux publication has been part of the substantive discourse from the outset. This approach should not be countenanced.

However, for the reasons discussed below, Appellant respectfully submits that the Bellevue Linux publication fails to cure the clear deficiencies in the Holt '261 patent and, rather than

remanding for further *ex parte* prosecution, Appellant respectfully requests that all claims be determined to patentably distinguish over the art of record. Prompt allowance is earnestly solicited.

3.   THE BELLEVUE LINUX PUBLICATION FAILS TO PROVIDE REQUISITE SUGGESTION TO PERSON SKILLED IN THE ART

The Examiner's obviousness rejection pursuant to 35 USC §103 is summarized in the Examiner's Answer as follows:

> The Examiner has set forth a sustainable prima facie case in support of the 35 U.S.C. 103 rejection of the present claims. The support is based on the identification of a correspondence of the cited portions of the Holt reference to that of each claim aspect of the present claims; and on the identification of a suggestion in the prior art to cause a person of skill in the art of creating color information files to modify the methods of Holt so as to arrive at the recited subject matter of the present claims. Bellevue Linux's "Plain Text Definition" provides evidence of such suggestion. Linux defines plain text as a string of character (pp. 1, Para 1), which usually refers to ASCII characters (pp. 1, Para 2) as Appellant's specification also discloses (pp. 9, Para 2). Linux identifies programming languages as examples of plain text formats that have the advantage of making plain text easier for computers to read, reorganize and restructure while keeping it readable by humans (pp. 3, Para. 3). [Examiner's Answer at page 5.]

Appellant has previously laid out the deficiencies in the Holt '261 patent and these deficiencies will not be reiterated herein, except to the extent such deficiencies are further amplified by the Examiner's reliance on the Bellevue Linux publication. Appellant incorporates by reference the arguments and distinctions advanced with respect to the Holt '261 patent in the Appeal Brief, specifically the arguments set forth at pages 6-12.

Appellant respectfully submits that the Bellevue Linux publication fails to cure the deficiencies previously noted with respect to the Holt '261 patent. More particularly, the Bellevue Linux publication fails to provide a suggestion or motivation to modify the Holt '261 patent to arrive at Appellant's claimed invention. The outstanding obviousness rejection is untenable because the Holt '261 patent, whether taken alone or in combination with the Bellevue Linux publication, fails to teach or suggest, *with respect to a data set describing the color impression of a color sample*, any of:

(1)   coding such a data set into a text format (whether pure or otherwise);

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(2)   storing such a data set (whether in a text format or otherwise) in a color
      information file;

(3)   storing in the color information file information data identifying, characterizing,
      and supplementing such color sample; and/or

(4)   storing such information data in the color information file in a format containing
      data objects and having an open, expandable, and hierarchically organized
      object structure.

As noted in the Examiner's Answer, the Bellevue Linux publication addresses programming languages, e.g., SGML, HTML and XML, at page 3. However, the Examiner's reliance on the statements in paragraph 3 is misplaced. In general, a programming language is not a text format, but a standardized communication technique for expressing instructions to a computer/processing unit. More particularly, programming languages are sets of syntactic rules used to define computer programs that are written in source code, wherein the source code is readable by humans. Thus, with reference to page 3 of the Bellevue Linux publication, Appellant respectfully submits that a person of ordinary skill in the art would interpret the verbiage as follows (with the bracketed language added):

> [Source code of] programming languages as well as SGML (standard
> generalized markup language and its modern descendants, e.g., HTML and
> XML, are examples of plain text formats that have well-defined structures.
> These formats have the important advantage of making plain text easier for
> computers to read, reorganize and restructure while keeping it relatively
> readable by humans.

In the absence of the "source code" insertion set forth above, the cited paragraph is inconsistent with the realities of software programming. As is well known to persons skilled in the art, a program's source code is in a text format – which a human can read and understand – but is then compiled by a compiler into a machine-readable format, i.e., a non-text format.

The proposed combination of the Holt '261 patent and the Bellevue Linux publication, fails to teach or suggest Appellant's claimed invention. Indeed, the Bellevue Linux publication essentially reinforces the deficiencies in the Holt '261 patent, as set forth in Appellant's previously submitted Appeal Brief, and does nothing to cure such deficiencies.

The deficiencies of the proposed combination are readily apparent from the discussion which follows. With particular reference to the Holt '261 patent, an operating system software 50 is disclosed that <u>includes</u> an input interface module 52, a color model architecture 54 and an output interface module 56. As disclosed in the Holt '261 patent, the color model architecture 54 can be written in an object-oriented programming language, e.g., Smalltalk, Ada, CLOS, C and C++.

Inasmuch as Holt's operating system software 50 <u>includes</u> the disclosed color model architecture 54 (see col. 5, lines 57-59), it necessarily follows that the color model architecture 54 is written in a programming language that is compiled for execution by a processing unit (i.e., **coded** instructions executed by the CPU wherein the coded instructions are only machine-readable). At most, the programming language includes source code that is readable by humans. However, beyond such source code, there is nothing in Holt's operating system software 50 or color model architecture 54 that is in text format or is readable by humans.

The teachings of the Bellevue Linux publication fail to cure the significant deficiencies in the Holt '261 patent. Rather, the Bellevue Linux publication merely reinforces the concept that programming languages can include source code. However, the mere presence of source code – which is readable by a human – is wholly insufficient to render obvious Appellant's pending claims and/or to maintain the outstanding obviousness rejection. Contrary to the position apparently advanced in the Examiner's Answer, the Bellevue Linux publication cannot serve to equate the term "programming language" with the term "pure text."

For at least the foregoing reasons, Appellant respectfully submits that the obviousness rejections based on the Holt '261 patent, whether taken alone or in combination with the Bellevue Linux publication, is untenable and should be withdrawn. Reconsideration and withdrawal of the outstanding obviousness rejections are earnestly solicited.

4.   <u>CONCLUSION</u>

For the reasons cited above, Appellant respectfully submits that this application is in condition for allowance and requests reversal of the outstanding rejections and early allowance of this application. If there are any additional charges with respect to this Appeal or otherwise, please charge them to Deposit Account No. 50-1402 maintained by Appellant's attorneys.

Respectfully submitted,

Date: January 9, 2006   By: _____

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